

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

STEPHEN McCOLLUM, <i>et al.</i>,	§	
<i>Plaintiffs,</i>	§	
	§	
v.	§	CIVIL ACTION NO. 3:12-CV-02037
	§	
BRAD LIVINGSTON, <i>et al.</i>,	§	
<i>Defendants.</i>	§	

**UTMB’S REPLY TO PLAINTIFFS’ RESPONSE TO UTMB’S
MOTION TO QUASH AND
NOTICE REGARDING UTMB’S MOTION TO QUASH**

NOW COMES Defendant the University of Texas Medical Branch, by and through its Attorney, the Attorney General for the State of Texas, and submits this Reply to Plaintiffs’ Response to UTMB’s Motion to Quash [D.E.175] and Notice Regarding UTMB’s Motion to Quash [D.E. 177]. In support thereof, the Defendant respectfully offers the following:

Defendant UTMB filed an Emergency Motion to Quash [D.E. 172] the unilaterally noticed deposition of Mr. Bob Shaffer, Director of IT at the University of Texas Medical Branch-Galveston. Plaintiffs seek to depose Mr. Shaffer on the topic of electronically stored information. Defendant UTMB asks that the deposition be re-scheduled for June 16, 2014 or later due to Mr. Shaffer’s requirement to conduct training at UTMB Galveston the week of June 9, 2014, and his scheduled vacation the week of June 16, 2014.

Plaintiffs filed a Response [D.E. 175] to the Motion to Quash. Attached to the Response as Exhibits 5 and 6 are UTMB’s responses to the request for deposition dates. In it, counsel for UTMB makes several efforts to find an acceptable date, citing the witnesses’ training schedule and vacation. Clearly, plaintiffs’ counsel understood the conflict in dates, but refused to

reschedule the deposition. This case is not currently under a scheduling order and is not set for trial. The court stayed all pending deadlines on May 5, 2014. [D.E. 162].

Plaintiffs then filed their “Notice” Regarding University of Texas Medical Branch’s Motion to Quash Deposition. [D.E. 177]. In their Notice, plaintiffs ask the court to order Mr. Shaffer not to attend training, but instead to appear in Austin on June 2 or 3 for a deposition on ESI. Reluctantly, UTMB files this reply.

Both the plaintiffs’ counsel and the UTMB counsel in the *McCollum* case have the following schedule for the week of June 2, 2014. All lawyers reside and work in Austin.

1. Monday, June 2 – 10:30 a.m. hearing in Houston in the case of *Martone v. Livingston*, Cause No. 4:13-cv-3369, pending in the Southern District of Texas, Houston Division. This is one of the pending heat cases akin to the *McCollum* case.
2. Tuesday, June 3 – UTMB counsel meets with two nurse witnesses in Houston in preparation for their depositions in the *Martone* case. These depositions were also unilaterally noticed by plaintiffs, without consulting on dates, times or location with UTMB counsel.
3. Wednesday, June 4 – UTMB will present the two nurse witnesses. After the depositions, the lawyers will travel from Houston to Tyler for the following day’s depositions.
4. Also on Wednesday, UTMB and Edwards’ firm lawyers will take the agreed upon deposition of plaintiff Glanville in the case of *Glanville v. Corrections Corp. of America*, Cause No. 1:13-cv-519, in the Western District of Texas, Austin Division, in Austin.
5. Thursday, June 5 - UTMB will present two nurse witnesses and a physician in Tyler, Texas in the case of *Adams v. Livingston*, Cause No. 6:13-cv-712, pending in the Eastern

District of Texas, Tyler Division. These depositions were also unilaterally noticed by plaintiffs, without consulting on dates, times or location with UTMB counsel.

6. Friday, June 6 - UTMB will present two more nurse witnesses in Tyler. After the depositions, the lawyers will return to Austin.

Now counsel for plaintiffs insists that the deposition of Mr. Shaffer is so urgent that it cannot possibly wait until after his training and vacation, and the lawyers, along with Mr. Shaffer, must return to Austin after the hearing on June 2 or June 3 to present Mr. Shaffer for his deposition before returning to Houston for the *Martone* depositions. UTMB respectfully requests that Mr. Shaffer's deposition be quashed, and that his deposition take place June 16 or later at his place of business in Galveston.

Further, in accordance with the local practice in the Northern District of Texas, Dallas Division, UTMB asks that counsel for plaintiffs be ordered to read the case of *Dondi v. Commerce Savings and Loan Assoc*, 121 F.R.D. 284 (N.D. Dallas, 1988). Further, in accordance with FRCP 26(b)(4)(E), UTMB asks that plaintiffs be ordered to pay its fees for filing the motion to quash and for filing this response in the amount of \$500.

WHEREFORE PREMISES CONSIDERED, UTMB prays that Mr. Shaffer's deposition be quashed, that it be rescheduled for June 17 in Galveston, and that plaintiffs pay fees in the amount of \$500.

Respectfully submitted,

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/s/KIM COOGAN
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ATTORNEYS FOR DEFENDANT
UNIVERSITY OF TEXAS MEDICAL BRANCH

NOTICE OF ELECTRONIC FILING

I, KIM COOGAN, Assistant Attorney General of Texas, certify that I have electronically submitted for filing to the Court, UTMB'S REPLY TO PLAINTIFFS' RESPONSE TO UTMB'S MOTION TO QUASH AND NOTICE REGARDING UTMB'S MOTION TO QUASH on May 28, 2014, in the Northern District of Texas, Dallas Division.

/s/ KIM COOGAN
KIM COOGAN
Assistant Attorney General

CERTIFICATE OF SERVICE

I, KIM COOGAN, Assistant Attorney General of Texas, do hereby certify that a true and correct copy of the above and foregoing UTMB'S REPLY TO PLAINTIFFS' RESPONSE TO UTMB'S MOTION TO QUASH AND NOTICE REGARDING UTMB'S MOTION TO QUASH has been served by placing the same in the United States Postal Service, postage prepaid, on this the May 28, 2014, addressed to:

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